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[REDACTED]

**STATE OF WISCONSIN**  
**Division of Hearings and Appeals**

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In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]

DECISION

CCO/171413

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**PRELIMINARY RECITALS**

Pursuant to a petition filed January 15, 2016, under Wis. Admin. Code § HA 3.03, to review a decision by the Milwaukee Early Care Administration - MECA in regard to Child Care, a hearing was held on February 11, 2016, at Milwaukee, Wisconsin.

The issue for determination is whether the agency properly seeks to recover an overissuance of child care benefits from the Petitioner in the amount of \$2,208.48 for the period of October 12, 2014 – August 31, 2015.

There appeared at that time and place the following persons:

**PARTIES IN INTEREST:**

Petitioner:

[REDACTED]  
[REDACTED]  
[REDACTED]

|

Respondent:

Department of Children and Families  
201 East Washington Avenue, Room G200  
Madison, Wisconsin 53703

By: Attorney [REDACTED]

Milwaukee Early Care Administration - MECA  
Department of Children And Families  
1220 W. Vliet St. 2nd Floor, 200 East  
Milwaukee, WI 53205

**ADMINISTRATIVE LAW JUDGE:**

Debra Bursinger  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County.

2. On September 2, 2014, the Petitioner appeared at the agency to request child care authorization. He was authorized for one non-school aged child for 8 hours of child care from August 31, 2014 – November 1, 2014 based on Petitioner being employed 1 day/week for 8 hours.
3. On September 8, 2014, the agency issued a Child Care Authorization notice to the Petitioner informing him that he was authorized for child care for 9 hours/week for the period of August 31, 2014 – November 1, 2014.
4. On September 14, 2014, the agency received an employer statement from [REDACTED] reporting that the Petitioner's new hire date was August 16, 2014 and his work schedule was Monday – Friday, 3 p.m. – 10 p.m. No rate of pay information was included.
5. On September 16, 2014, the agency issued a notice of proof needed requesting employment and income verification from [REDACTED] [REDACTED] [REDACTED]. The due date for the information was September 25, 2014.
6. On September 29, 2014, the Petitioner completed an application renewal. On September 30, 2014, the agency issued a summary to the Petitioner of the information he reported in the application. Specifically, he reported employment with [REDACTED] with a start date of August 16, 2014, 70 hours/pay period (semi-monthly) @ \$7.25/hour.
7. On September 30, 2014, the agency issued a Notice of Eligibility Child Care to the Petitioner informing him that his child care would continue effective November 1, 2014. The notice also advised the Petitioner of the requirement to report any changes in his situation that might change eligibility within 10 days including the end of employment. The notice informed him that the eligibility decision was based on his employment and income with [REDACTED] with gross earned income of \$1,015/month.
8. On October 10, 2014, Petitioner's employment with [REDACTED] ended. No report of the end of employment was made to the agency within 10 days.
9. Petitioner contacted the agency on October 21, 2014 and reported employment with [REDACTED]. He refused to provide his work schedule. He did not report that his employment with [REDACTED] ended. An agency worker attempted to contact [REDACTED] to verify Petitioner's hours. The employer did not return the phone call.
10. On October 27, 2014, the agency issued a Child Care Authorization notice to the Petitioner informing him that he was authorized for child care for 18 hours/week for the period of October 19, 2014 – May 2, 2015.
11. On November 3, 2014, the agency issued a Child Care Authorization notice to the Petitioner informing him that he was authorized for child care for 18 hours/week for the period of October 26, 2014 – May 2, 2015.
12. On January 15, 2015, the Petitioner provided employment verification for [REDACTED]. The employer verified a start date of October 12, 2007 and reported that he worked 6 hours/week at \$8.00 hour. The case was pended for verification of [REDACTED] employment.
13. On January 15, 2015, the agency received a statement from [REDACTED] [REDACTED] that the Petitioner had been hired on January 4, 2015. He was reported to work 30 hours/week @ \$8.25/hour.
14. On January 19, 2015, the agency issued a Child Care Authorization notice to the Petitioner informing him that he was authorized for child care for 18 hours/week for the period of October 26, 2014 – January 31, 2015.
15. On January 21, 2015, the Petitioner contacted the agency to inquire about the status of his case. He was informed that verification was still needed for [REDACTED]. He said he faxed a verification that day. The Petitioner again refused to provide his work hours.

16. On January 22, 2015, the agency issued a Notice of Eligibility Child Care to the Petitioner informing him that he was eligible for child care continuing February 1, 2015. The notice also advised the Petitioner of the requirement to report any changes in his situation that might change eligibility within 10 days including the end of employment. The notice informed him that the eligibility decision was based on his employment and income with [REDACTED] with gross earned income of \$1,064.25/month and [REDACTED] with gross earned income of \$206.40/month.
17. On February 2, 2015, the Petitioner's employment with [REDACTED] ended. He did not report the end of employment to the agency within 10 days.
18. On February 4, 2015, the agency received a letter from [REDACTED] verifying his end of employment on October 10, 2014.
19. On February 9, 2015, Petitioner's child care authorizations were processed based on employment with [REDACTED] and [REDACTED]. The agency issued a Child Care Authorization notice to the Petitioner informing him that he was authorized for child care for 41 hours/week for the period of February 1, 2015 – July 4, 2015.
20. On April 20, 2015, the agency issued a Child Care Authorization notice to the Petitioner informing him that he was authorized for child care for 41 hours/week for the period of February 1, 2015 – May 2, 2015.
21. On July 1, 2015, the agency received employment verification from [REDACTED] reporting the Petitioner worked 15 hours/week at \$8.00/hour.
22. On July 6, 2015, the Petitioner completed a Six Month Report Form. He reported his employment with [REDACTED] but answered "yes" to the question of whether there had been a change in his rate of pay or hours. He did not report that the employment ended. He reported his employment with [REDACTED] 12 hours/pay period @ \$8.00/hour.
23. On July 7, 2015, the agency issued a Notice of Eligibility Child Care to the Petitioner informing him that he was eligible for child care beginning July 1, 2015. The notice also advised the Petitioner of the requirement to report any changes in his situation that might change eligibility within 10 days including the end of employment. The notice informed him that the eligibility decision was based on his employment and income with [REDACTED] with gross earned income of \$516.00/month.
24. On July 13, 2015, the agency issued a Child Care Authorization to the Petitioner informing him that he was authorized for child care for 17 hours/week for the period of July 5, 2015 – August 29, 2015.
25. On August 24, 2015, the agency issued a Child Care Authorization notice to the Petitioner informing him that he was authorized for child care for 17 hours/week for the period of July 5, 2015 – August 29, 2015.
26. On October 19, 2015, the agency received an employer verification of earnings from [REDACTED] Center. It reported the Petitioner's period of employment as August 16, 2014 – October 10, 2014. It reported he worked 32 hours/week at \$7.50/hour. It reported his work hours as follows: Monday 4 p.m. – 9 p.m., Tuesday 2 p.m. – 9 p.m., Wednesday 12 p.m. – 8 p.m., Thursday 2 p.m. – 9 p.m., Friday 2 p.m. – 9 p.m., Saturday 4 p.m. – 9 p.m. It reported the Petitioner earned the following gross wages:

August, 2014	\$562.50 (75 hours)
September, 2014	\$1,110.00 (148 hours)
October, 2014	\$382.50 (51 hours)

27. On November 6, 2015, the agency received an employer verification of earnings from [REDACTED]. It reported the Petitioner's period of employment as November 3, 2008 – current. It reported he worked 6 hours/week at \$8.50/hour. It reported the Petitioner earned the following gross wages:
- |               |                        |                |                        |
|---------------|------------------------|----------------|------------------------|
| June, 2014    | \$162.55 (21.11 hours) | January, 2015  | \$84.80 (10.6 hours)   |
| July, 2014    | \$139.06 (18.06 hours) | February, 2015 | \$196.32 (24.54 hours) |
| August, 2014  | \$214.83 (27.9 hours)  | March, 2015    | \$206.08 (25.76 hours) |
| Sept, 2014    | \$109.11 (14.17 hours) | April, 2015    | \$197.52 (24.67 hours) |
| October, 2014 | \$154.15 (20.02 hours) | May, 2015      | \$227.20 (28.4 hours)  |
| Nov, 2014     | \$120.66 (15.67 hours) | June, 2015     | \$93.04 (11.63 hours)  |
| Dec, 2014     | \$131.83 (16.96 hours) | July, 2015     | \$334.48 (41.81 hours) |
|               |                        | August, 2015   | \$179.92 (22.49 hours) |
28. On November 18, 2015, the agency received an employer verification of earnings from [REDACTED]. [REDACTED] It reported the Petitioner's period of employment as January 4, 2015 – February 2, 2015. It reported his work hours as Sunday - Saturday, 9 – 11 a.m. and 4 – 6:15 p.m. It reported the Petitioner earned the following gross wages:
- |                |                      |
|----------------|----------------------|
| January, 2015  | \$981.75 (119 hours) |
| February, 2015 | \$70.13 (8.5 hours)  |
29. On December 4 and 7, 2015, the agency issued Child Care Client Overpayment Notices and worksheets to the Petitioner informing him that the agency intends to recover an overissuance of child care benefits in the amount of \$2,208.48 for the period of October 12, 2014 – August 31, 2015 for failure to provide accurate information due to an intentional program violation.
30. On December 7, 2015, the agency issued a Notice of Intentional Program Violation to the Petitioner. No appeal of that action was filed with the Division of Hearings and Appeals.

### DISCUSSION

Wis. Stat. § 49.195(3), provides as follows:

A county, tribal governing body, Wisconsin works agency or the department shall determine whether an overpayment has been made under s. 49.19, 49.148, 49.155 or 49.157 and, if so, the amount of the overpayment.... Notwithstanding s. 49.96, the department shall promptly recover all overpayments made under s. 49.19, 49.148, 49.155 or 49.157 that have not already been received under s. 49.161 or 49.19(17) and shall promulgate rules establishing policies and procedures to administer this subsection.

Child care subsidies are authorized in Wis. Stat. § 49.155, and thus they are within the parameters of § 49.195(3). Recovery of child care overpayments also is mandated in the Wis. Adm. Code, §DCF 101.23. An overpayment is any payment received in an amount greater than the amount that the assistance group was eligible to receive, regardless of the reason for the overpayment. Wis. Adm. Code, §DCF 101.23(1)(g). Recovery must occur even if the error was made by the agency.

A parent is eligible for child care services if she needs the care to attend Wisconsin Works (W-2) approved school, to work, or to participate in W-2 activities. Wis. Stat. § 49.155(1m)(a); W-2 Manual, §15.2.0. The agency shall recover child care payments if the authorized payments would have been less

because the parent was absent from an approved activity while the child was in care. Child Day Care Manual, Chapter 2, §2.3.1.

In this case, the agency contends that, while the Petitioner was eligible for child care benefits, he would have received authorization for fewer hours if he had properly reported his employment status and hours of employment. The agency asserts that his failure to timely report the end of employment with [REDACTED] and [REDACTED] was an intentional program violation that resulted in the Petitioner receiving more child care hours and benefits than he was entitled to receive.

The agency presented evidence to demonstrate that the Petitioner received child care authorizations related to his employment at [REDACTED] Center from October, 2014 – January, 2015. His employment ended on October 10, 2014. The agency asserts that the Petitioner did not inform the agency that his employment had ended and he continued to receive child care authorizations through January. On February 4, 2015, the agency received verification that his employment had ended in October.

The agency presented evidence to demonstrate that the Petitioner receive child care authorizations related to his employment at [REDACTED] from February, 2015 – August, 2015. The evidence suggests that the first report the agency had that the Petitioner's employment at [REDACTED] had changed was the SMRF submitted on July 6, 2015 when the Petitioner reported there was a change in the rate of pay or hours. The notice of eligibility for child care indicates that he reported only the income from [REDACTED]. However, the child care authorizations were issued for 17 hours/week through the end of August, 2015.

At the hearing, the Petitioner argued that he provided accurate employment verifications when requested. The evidence does not support the Petitioner. The case comments provide verification of Petitioner making numerous contacts with the agency after ending his employment at [REDACTED] and at [REDACTED] but Petitioner did not report the end of employment. The Petitioner received numerous notices that informed him of the requirement to report any changes in employment within 10 days. The notices also informed him that authorizations were issued based on employment that he knew no longer existed. He was not eligible to receive child care benefits for hours that he was not in an approved activity.

I reviewed the agency's overpayment worksheets and evidence and find no error in the overpayment calculation.

Based on the evidence submitted, I conclude that the agency properly seeks to recover an overissuance of child care benefits from the Petitioner in the amount of \$2,208.48 for the period of October 12, 2014 – August 31, 2015 based on an intentional program violation.

### **CONCLUSIONS OF LAW**

The agency properly seeks to recover an overissuance of child care benefits from the Petitioner in the amount of \$2,208.48 for the period of October 12, 2014 – August 31, 2015 based on an intentional program violation.

**THEREFORE, it is**

**ORDERED**

That the Petitioner's appeal is dismissed.

## REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

## APPEAL TO COURT

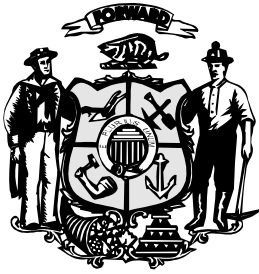
You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Children and Families, 201 East Washington Avenue, Room G200, Madison, Wisconsin 53703, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Milwaukee,  
Wisconsin, this 10th day of May, 2016

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\sDebra Bursinger  
Administrative Law Judge  
Division of Hearings and Appeals



**State of Wisconsin\DIVISION OF HEARINGS AND APPEALS**

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The preceding decision was sent to the following parties on May 10, 2016.

Milwaukee Early Care Administration - MECA  
Public Assistance Collection Unit  
Child Care Fraud  
Attorney [REDACTED]